

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

WESLEY S. BATTEY, JR.,
 Plaintiff,
 vs.
 STATE OF NEVADA,
 Defendant.

Case No. 2:13-cv-00537-APG-CWH

FINDINGS AND
RECOMMENDATION

Plaintiff submitted a Second Motion/Application to Proceed *in Forma Pauperis* (#3) on April 5, 2013. On April 17, 2013, the Court granted Plaintiff's Second Motion/Application to Proceed *in Forma Pauperis* (#3) and ordered the Clerk of the Court to file Plaintiff's Complaint (#1-1). In addition, the Court ordered that the Complaint be dismissed without prejudice and granted Plaintiff thirty (30) days from to file an amended complaint correcting the noted deficiencies.

Plaintiff did not adequately allege a violation of 42 U.S.C. § 1983. He simply declared that he was subjected to false arrest and false imprisonment by the Las Vegas Metropolitan Police Department and malicious prosecution by the District Attorney for the State of Nevada. However, he failed to provide sufficient facts to determine whether the officers lacked probable cause for the arrest, how he was racially profiled, why the immunity defense would not apply, and the elements fo the malicious prosecution claim. As a result, the Court found that Plaintiff did not demonstrate that this Court has subject matter jurisdiction based on a federal question. Additionally, according to Plaintiff's complaint, he is a citizen of Nevada. Plaintiff names the State of Nevada as defendant. Thus, the Court found that Plaintiff did demonstrate diversity of citizenship required for subject matter jurisdiction based on diversity. Finally, the Court found that Plaintiff failed to state a plausible claim for relief because he did not provide factual support for his claims. More than

1 thirty days have elapsed since the Court's Order dismissing Plaintiff's Complaint without prejudice
2 and Plaintiff has not submitted an amended complaint with sufficient facts to state a plausible claim
3 for relief in this case.

4 Based on the foregoing and good cause appearing therefore,

5 **RECOMMENDATION**

6 **IT IS HEREBY RECOMMENDED** that Plaintiff's Complaint (#5) be **dismissed with**
7 **prejudice** because Plaintiff failed to file an amended complaint within 30 days of the Court's April
8 17, 2013 Order.

9 **NOTICE**

10 Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be
11 in writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has
12 held that the courts of appeal may determine that an appeal has been waived due to the failure to
13 file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit
14 has also held that (1) failure to file objections within the specified time and (2) failure to properly
15 address and brief the objectionable issues waives the right to appeal the District Court's order
16 and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153,
17 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

18 DATED this 29th day of May, 2013.

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22 **C.W. Hoffman, Jr.**
23 **United States Magistrate Judge**
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